

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

74-1625

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA
ex rel. ANDREW LEE STEWART,

Petitioner-Appellant,

-against-

THE HONORABLE LEON J. VINCENT,
Superintendent,
Green Haven Correctional Facility,
Stormville, New York,

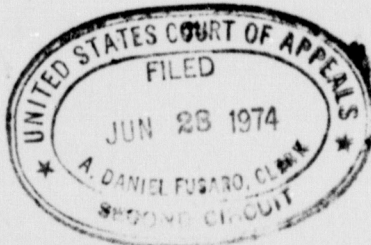
Respondent-Appellee.

Docket No. 74-1625

B
P/S

APPENDIX TO
PETITIONER-APPELLANT'S BRIEF

ON APPEAL FROM AN ORDER OF
THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK
DENYING A PETITION FOR WRIT OF HABEAS CORPUS



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Appellant
FEDERAL DEFENDER SERVICES UNIT
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SHEILA GINSBERG,
Of Counsel

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73-C-1446 U.S.A. ex rel. ANDREW LEE STEWART vs. LEON VINCENT, Superintendent etc

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS
9-25-73	PETITION FILED FOR A WRIT OF HABEAS CORPUS. Letter of relator filed.	1 & 2
9-25-73	Copy of letter of Clerk of Court filed dated Sept. 25, 1973 addressed to relator herein re application, etc.	3
10-10-73	BY COSTANTINO, J. ORDER TO SHOW CAUSE FILED why a writ of habeas corpus should not be issued, etc.	4
10-11-73	Copy of letter of Clerk of Court filed dated Oct. 11, 1973 re enclosure of a copy of order to show cause, etc.	5
10-29-73	Affidavit of ANDREW LEE STEWART filed for Entry of Default, etc.	6
11-21-73	Affidavit of IRIS A. STEEL, Assistant Atty., Gen., State of N.Y. filed in opposition, etc.	7
11-27-73	Letter of relator herein filed together with a reply from Clerk of Court dated Nov. 27, 1973 re status of this matter, etc.	8 & 9
12-7-73	Affidavit of Andrew Lee Stewart filed in reply to opposition.	10
2-6-74	Letter of relator herein filed dated Feb. 2, 1974 together with a copy of letter of Clerk of Court dated Feb. 6, 1974 re status of this matter, etc.	11 & 12
4-16-74	BY COSTANTINO, J. MEMORANDUM and ORDER FILED. THE APPLICATION IS DISMISSED. (See Memo., etc.)	13
4-24-74	Letter of relator herein filed dated April 19, 1974 addressed to Clerk re issuance of a Certificate of Probable Cause, etc.	14
4-30-74	BY COSTANTINO, J. MEMORANDUM and ORDER FILED. The relator is granted leave to proceed in forma pauperis and a certificate of probable cause. (See Memo., etc.)	15
<div data-bbox="264 1673 750 1966" data-label="Text"> <p>A TRUE COPY DATED <u>APR 7</u>, 1974 LEWIS ORGEL CLERK BY <u>THOMAS R. BART</u> DEPUTY CLERK</p> </div>		
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U.S. DISTRICT COURT E.D. N.Y.

APR 16 1974

TIME A.M.
P.M.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA ex rel.
ANDREW LEE STEWART,

Petitioner,

v.

LEON VINCENT, Superintendent
of Green Haven Correctional Facility,

Respondent.

73-C-1446

FILED

MEMORANDUM
and
ORDER

APR 16 1974

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Submitted:
Andrew Lee Stewart, pro se

COSTANTINO, D.J.

This is an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (1971). The relator is incarcerated in the Greenhaven Correctional Facility, Stormville, New York, pursuant to a judgment of conviction entered in June 1970, in the County Court, Suffolk County, New York, after a trial by jury on a charge of robbery in the first degree.

The judgment of conviction was unanimously affirmed without opinion by the Appellate Division, Second

(13)

Department. Leave to appeal to the New York Court of Appeals was denied.

Essentially relator charges that numerous errors committed at the trial deprived him of a fair trial guaranteed by the due process clause of the fourteenth amendment. He has annexed to the application his thirteen point appellate brief which encompasses all of his present claims.

The principal claim of error is the trial court's refusal to suppress identification evidence. It is argued that pretrial identifications of the relator were the product of impermissibly suggestive procedures. Relator's picture had been selected by the victims of the robbery from a spread of six pictures not more than four days after the crime. Less than a month after the crime, during a felony hearing before a judge and in the presence of relator's attorney, one of the victims selected him from a large group of people sitting in the courtroom. The record is clear that the procedures followed in obtaining the pre-trial identifications were not suggestive. Therefore, the trial court correctly refused to suppress the identification

testimony. Neil v. Biggers, 409 U.S. 188 (1972); Simmons v. United States, 390 U.S. 377 (1968); Stovall v. Denno, 388 U.S. 293 (1967).

The rest of relator's claims pertain to prejudicial statements made during the course of his trial and several adverse rulings of the trial judge. The court finds them to be without merit; for assuming arguendo that they are true and that they constitute errors under state law, they do not give rise to a violation of the federally protected right to a fundamentally fair trial. The claimed errors are of no substance, and neither singly nor in their totality are so egregious as to have deprived relator of a fair trial. United States ex rel. Birch v. Fay, 190 F.Supp. 105 (S.D.N.Y. 1961).

Accordingly, the application is dismissed.



U. S. D. J.

Certificate of Service

June 28, 1974

I certify that a copy of this brief and appendix
has been mailed to the Attorney General of the State
of New York.

Shirley Dinsbury

